

TEXAS BUSINESS COURTS GET POWER TO RESOLVE TRADE SECRET CASES: WHAT THIS MEANS FOR EMPLOYERS IN THE STATE

Insights
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A new Texas law that took effect September 1 expands the jurisdiction of the state's business courts to include certain trade secret claims. The change is expected to result in faster and more efficient resolution of qualifying cases, since these courts have streamlined procedures and are led by judges with specialized business law experience. Here's what you need to know about the expansion and the impact on your litigation strategy.

Key Points

- The Texas Business Court was approved through legislation in 2023 and began operating in September 2024. Texas was the 31st state to establish this type of specialized court geared exclusively towards complex, high-dollar business disputes.
- The Texas Business Court is composed of eleven divisions encompassing all 254 counties in Texas. Only five of those divisions, however, are currently operational, covering the counties in and around Dallas, Austin, San Antonio, Fort Worth, and Houston. The remaining six divisions will be eliminated in 2026, unless the Texas Legislature reauthorizes and funds them.
- Judges are appointed by the Governor for a two-year term and selected for their business law experience. The purpose is to align with Texas's business-friendly policies and ensure that high-stakes commercial lawsuits are efficiently adjudicated by judges with relevant experience.

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- HB40, which took effect on September 1, expands the enforcement power of the Texas Business Court to include trade secret cases. We'll explain this in more detail below.

What Changed?

Under the initial regime, the business courts had concurrent jurisdiction with district courts over:

1. Cases with at least \$5 million in controversy that involve:
 - a. corporate governance or derivative proceedings;
 - b. certain disputes between an organization and its owners regarding their actions, duties, and potential liability;
 - c. state and federal trade or securities-related actions against an owner, controlling person, or managerial official; or
 - d. disputes arising from the Texas Business Organizations Code.
2. Cases involving the types of claims discussed above – regardless of the amount in controversy – if a party to the action is a publicly traded business.
3. Cases exceeding \$10 million in controversy if the action:
 - a. arises from a qualified transaction (a transaction that is not a loan by a bank, with an aggregate value of at least \$10 million);
 - b. involves contractual or other commercial transactions in which the parties agreed that the business court has jurisdiction over any associated action (except insurance contracts); or
 - c. is against an organization or officer and stems from a violation of the Finance Code or Business and Commerce Code, other than a bank, credit union, or savings and loan association.

HB40 expands the scope of the third category above to lower the threshold to \$5 million, and include:

- a. actions relating to the ownership or use of intellectual property, specifically including "trade secrets" as



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defined under the Texas Uniform Trade Secrets Act (TUTSA); and

b. actions arising under TUTSA.

Cases that do not meet these criteria must continue to be litigated in regular state district courts or federal district courts.

How Will the New Law Affect Non-Compete Cases?

- The bill may also benefit non-compete cases. While the bill does not explicitly expand the Business Courts' jurisdiction to include claims related to the Texas Covenants Not to Compete Act, it will likely result in an uptick in cases heard by these courts (since many non-compete cases also include trade secret claims).
- Further, we expect more plaintiffs to add trade secret claims to their non-compete claims to invoke the Business Courts' jurisdiction, especially if the alternative is filing in a court where the judge or jury pool is considered less favorable for businesses. If a case is originally filed in a Business Court, the plaintiff can choose any venue that is a proper county for trial. In addition, the parties and the Business Court judge may agree to hold the jury trial in any other county.
- However, there is risk to such an approach. The grounds for trade secret claims are narrower and require different evidence than claims for breach of non-disclosure, non-solicitation, and non-competition covenants. Namely, there must be evidence the former employee "misappropriated" the company's information or files that constitute trade secrets under TUTSA's narrow definition. Because TUTSA allows a prevailing party to recover attorneys' fees if a claim is made in bad faith, if a TUTSA claim is brought without at least a modicum of evidence, a court could order the company to pay the former employee's reasonable attorneys' fees and costs.
- Companies should also be mindful of the challenges that may exist in proceeding before the Business Courts, including higher filing fees, the potential impact of the judges' two-year appointment on case continuity, the Business Courts' current limited geographic availability, and the potential for the new Business Courts to interpret

various laws in ways that differ from standard courts' historical interpretations.

- On the flipside, it may be appealing for an employer to proceed in an expedited fashion before an experienced judge who is familiar with complicated business transactions and will issue a written opinion.

What Should Employers Do Now?

- Strategic planning for using the Texas Business Courts can pay dividends for savvy litigants. As an initial matter, employers should review the forum-selection clauses in their employment agreements and ensure they specify the venue in a county where the Business Courts operate or even designate a Business Court as a mandatory venue.
- Review the locations. As noted above, the Business Courts currently operate in the counties in and around Dallas, Austin, San Antonio, Fort Worth, and Houston. If the forum-selection clause specifies a county where they do not operate, then the Business Courts will not be available.
- Companies defending against trade secret cases in standard state district courts should also be aware that they may be able to move such cases to a Business Court in certain circumstances for all proceedings up to trial.

Conclusion

We will continue to monitor legislative developments in Texas, so make sure you are subscribed to [Fisher Phillips's Insight System](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Texas offices](#).